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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/814,308

03/31/2004

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EXAMINER

SELF, SHELLEY M

ART UNIT

PAPER NUMBER

3725

MAIL DATE

DELIVERY MODE

05/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/814,308	Applicant(s) POITRAS ET AL.	
	Examiner Shelley Self	Art Unit 3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-7,9-22,25-36 and 38-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-7,11-15,22 and 25-30 is/are allowed.
- 6) ☒ Claim(s) 10,16 and 31 is/are rejected.
- 7) ☒ Claim(s) 9,17-21,32-36 and 38-41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 August 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/31/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The amendment filed on February 15, 2008 has been considered but is ineffective to overcome the prior art reference.

Examiner notes claim 43 has not been presented in the current listing of claims filed February 15, 2008, additionally Applicant's remarks filed February 15, 2008 are silent to claim 43. Accordingly claim 43 is understood to be cancelled.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 16 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kerouac (6,017,740) in view of Shindo et al. (5,587,320) or in view of Seagren (6,399,366). As noted in the previous office Action (11/4/07), Kerouac does not disclose an auger disposed through each of the plurality of subchambers.

Both Shindo and Seagren each teach the use of an auger disposed through each of a plurality of subchambers. Because the references are from a similar art and deal with a similar problem, i.e., composting waste it would have been obvious at the time of the invention to the skilled Artisan to provide or construct Kerouac with an auger disposed through each of the

plurality of subchambers so as to efficiently compost waste as taught by both Shindo and Seagren.

As to the recitation of a malfunction sensor. Kerouac discloses sensors. Examiner notes that Kerouac's temperature and CO₂ sensors in conjunction with temperature and carbon dioxide readouts of the drum and material to the operator control station serve as malfunction sensors. Examiner notes such to be malfunction sensors because if the temperature is sensed to be too high (above 150° F) or too low, such is communicated to the operator station (col. 10, lines 16-33). Examiner further notes no structure as it relates to the "*malfunction sensor*" has been positively recited, further there is no clear recitation to what malfunction the sensor is sensing. Accordingly taken in its broadest interpretation, because Kerouac utilizes sensors to determine temperature and carbon dioxide levels, and readings associated with the sensed/ determined values of the sensors above or below the ideal/threshold amounts of temperature and/or carbon dioxide levels serve as "malfunction sensors".

With regard to claim 10, Kerouac discloses divider walls and apertures in the walls for enabling passage of organic material from the secondary sub-chamber into the tertiary sub-chamber (fig. 4).

Allowable Subject Matter

Claims 2-7, 11-15, 22 and 25-30 are allowed.

Claims 9, 17-21, 32-36 and 38-41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not disclose or fairly suggest a composting system comprising primary, secondary and tertiary subchambers wherein the input aperture is in communication with the primary sub-chamber, the exhaust aperture is in communication with the tertiary sub-chamber wherein *the input aperture, the first intermediate aperture, the second aperture and the exhaust aperture sequentially decrease in effective height* in combination with the rest of the positively recited limitations as set in claim 11.

The prior art does not disclose or fairly suggest a composting system comprising *a supply source in fluidic communication with at least one supply aperture disposed along the auger shaft or the at least one mixing vane* in combination with the rest of the positively recited limitations as set forth in claim 22.

Kerouac teaches the use of a composting system including an auger; a digestion chamber subdivided into sub-chambers wherein an input aperture (206) has a diameter of 12 inches, the intermediate apertures (216, 226) a diameter of 14 and 16 inches respectively. Kerouac further teaches the chamber having an aperture/port (236) for discharge into a composting container. Accordingly Kerouac does not teach *the input aperture, the first intermediate aperture, the second aperture and the exhaust aperture sequentially decrease in effective height*. Kerouac instead teaches against this construction. Further, Applicant has positively recited height relationships between the input, first intermediate, second intermediate and exhaust apertures so as to efficiently move the organic material to efficiently fill each chamber and then further pass to the exhaust into to a receptacle. Additionally, Kerouac does not disclose *a supply source in fluidic communication with at least one supply aperture disposed along the auger shaft or the at*

least one mixing vane. Accordingly such construction is not obvious, thus Kerouac neither anticipates nor renders obvious the claimed invention as set forth in claims 11 and 22.

Neither the prior art of record nor any combination thereof discloses the claimed invention as set forth in claim 11. Therefore, claims 2-7, 12-15 and 25-30 are deemed allowable over the prior art of record, based on their dependency to claim 11.

Applicant's remarks with regard to claims 9 and 32 are deemed persuasive; accordingly the rejections with respect to claims 9 and 32 are withdrawn.

Response to Arguments

Applicant's arguments filed February 15, 2008 have been carefully considered but they are not persuasive. Applicant's remarks are drawn to the failure of the prior art, Kerouac to disclose or fairly suggest a malfunction sensor. Applicant argues that the temperature and CO₂ sensors of Kerouac can not be deemed a malfunction sensor because, malfunction is defined as "to function imperfectly or badly: fail to operate normally". Applicant further states that "the mere existence of a temperature is not a malfunction such that Kerouac cannot properly prevent patentability of claim 16." This however is not deemed persuasive, because as noted above, Kerouac does disclose malfunction sensors. Examiner notes that Kerouac is not merely the presence of a temperature but a sensing of a temperature of the drum and organic material, and signaling when the temperature is too low and/or too high as it relates to optimal operating conditions (col. 6, lines 4-29 and col. 10, lines 16-33). Examiner further notes the claimed invention is silent to any structure of the sensors and the function of which is being sensed.

Therefore, the claimed invention does not patentably distinguish over the prior art, Kerouac and a rejection in view of Kerouac is made.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3725

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shelley Self/
Primary Examiner, Art Unit 3725

April 29, 2008